

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

JULIA HEAVERN, et al.

Plaintiffs,

v.

MARRIOTT INTERNATIONAL, INC.
and ZURICH NORTH AMERICA,

Defendants.

CIVIL ACTION NO.: 05-11170- MEL

**THE DEFENDANT, ZURICH NORTH AMERICA’S
MOTION FOR ENTRY OF SEPARATE AND FINAL JUDGMENT**

Pursuant to Fed. R. Civ. P. 54(b), the Defendant, Zurich American Insurance Company incorrectly identified as Zurich North America (“Zurich”), hereby moves for the entry of separate and final judgment in favor of Zurich as to Count VI (“Violation of M.G.L. c. 93A and M.G.L. c. 176D, Section 3(9)(f)”) of the Plaintiffs’ Complaint, the only Count asserted against Zurich.

As grounds for this Motion, Zurich states the following:

1. The Plaintiffs commenced this action against parties allegedly owning, operating or managing the Courtyard Marriott located in Concord, New Hampshire (“Marriott”) and Zurich, its insurer, seeking damages for personal injuries allegedly sustained by five minor children on or about March 15, 2003 while they were guests at the Marriott.
2. The Plaintiffs alleged that the five minor children sustained various injuries due to exposure to high levels of chlorine or other chemicals in the Marriott’s swimming pool.
3. Counts I through V of the Complaint are claims for negligence against the Marriott.

4. Count VI is a claim against Zurich under M.G.L. c. 176D and c. 93A, for Zurich's alleged failure to make a settlement offer and to respond to the Plaintiffs' written demands within thirty (30) days.
5. The parties presented oral arguments to the Court, Lasker, J., on October 26, 2005.
6. On October 26, 2005 the Court, Lasker, J., entered summary judgment in favor of Zurich as to Count VI ("Violation of M.G.L. c. 93A and M.G.L. c. 176D, Section 3(9)(f)") of the Plaintiffs' Complaint, the only Count asserted against Zurich.
7. Fed. R. Civ. P. 54(b), provides, in relevant part, as follows:

When more than one claim for relief is presented in an action, whether as a claim, counterclaim, cross-claim, or third-party claim, ... the court may direct the entry of a final judgment as to one or more but fewer than all of the claims or parties only upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment.
8. There is no just reason for delay in the entry of a final judgment in favor of Zurich in this case.

WHEREFORE, for the foregoing reasons, Zurich American Insurance Company respectfully requests that the court enter separate and final judgment in its favor in accordance with Fed. R. Civ. P. 54(b).

**ZURICH AMERICAN INSURANCE
COMPANY,**

By its Attorneys,

/s/ Gina A. Fonte

Peter G. Hermes, BBO. No. 231840

Gina A. Fonte, BBO No. 642367

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November 4, 2005

CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of November, 2005, I served the above notice on the Plaintiffs in the above-entitled action by mailing a copy thereof, postage prepaid, to counsel of record:

Garrett Bradley, Esquire
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/s Gina A. Fonte

Gina A. Fonte

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UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

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Defendants.

CIVIL ACTION NO.: 05-11170- MEL

ORDER

This matter came on for hearing on October 26, 2005 before the Honorable Lasker presiding. On October 31, 2005 the Court, Lasker, J., entered summary judgment in favor of the Defendant, Zurich American Insurance Company incorrectly identified as Zurich North America ("Zurich"), as to Count VI ("Violation of M.G.L. c. 93A and M.G.L. c. 176D, Section 3(9)(f)") of the Plaintiffs' Complaint, the only Count asserted against Zurich.

Having found that there is no just reason for delay, the Court hereby directs that separate and final judgment enter in favor of the Defendant, Zurich American Insurance Company, in accordance with Fed. R. Civ. P. 54(b).

Entered this _____ day of November, 2005.

Lasker, J.

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